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DECISION

*J. Vickers
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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-185169

DATE: March 1, 1977

MATTER OF: Volpe Construction Company, Inc.

DIGEST:

1. Where bidder contacts grantee to ascertain legal citation to local court decision concerning listing of suppliers in bid, grantee was not obligated to issue amendment to IFB advising all bidders of court decision, which was matter of public record.
2. Acceptance of bid by grantee, which bid listed multiple suppliers for certain items, is not objectionable where controlling State law approved of such acceptance and therefore grantee's action had rational basis.

Volpe Construction Company, Inc. (Volpe), has requested our review of the award of a contract to the S. A. Healy Company (Healy) by the Washington Suburban Sanitary Commission (WSSC) for the construction of phase I of the Piscataway Wastewater Treatment Plant. The plant is being constructed with funds under a grant from the Environmental Protection Agency (EPA) pursuant to the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500). Under the terms of the grant, EPA funds 75 percent of the estimated total eligible project cost.

The invitation for bids (IFB) contained a section wherein bidders were to indicate selected equipment suppliers. The IFB listed 24 items of equipment followed by a list of approved suppliers. For some of the items there was only one approved supplier but for the majority of items, between two and six approved suppliers were listed. In its bid, Healy, in the space provided on the bid form, listed all of the approved suppliers for all 24 items instead of only listing one supplier.

Volpe's request for our review is based on the allegation that the above action by Healy rendered its bid nonresponsive. Volpe further contends that the invitation was defective in failing to advise bidders of the Norsair Engineering Corporation v. Washington Suburban Sanitary Commission decision of the Circuit Court for Prince George's County, Maryland (Law No. 57,579, October 18, 1974). These contentions were rejected in a determination issued on October 15, 1975, by the Regional Administrator, EPA, Region III, pursuant to 40 C.F.R. § 35.939 (1975).

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The Norair decision involved a factual situation similar to the instant matter in which the low bidder listed more than one approved supplier for several items. The circuit court stated that the decision of the WSSC to accept the low bid was not arbitrary and the award would not be disturbed.

It appears from the record that an attorney for Healy contacted a member of the legal staff of the WSSC to obtain the citation to the Norair decision. The Regional Administrator's determination summarized the incident as follows:

"The controversy surrounding Norair in the present case arose as a result of counsel for Healy calling a member of the legal staff for grantee to determine the citation for Norair. Legal counsel for Healy stated on September 4, 1975, at the informal conference at EPA Region III offices that he knew Norair existed prior to the time of submitting bids and that he was not advised by grantee that he could submit more than one supplier in response to the invitation for bid. He additionally stated that the only information he received from the legal staff of WSSC was the case number of the Norair decision. General Counsel for grantee stated that Healy's counsel did request information regarding the ability to include multiple listing of supplies in the bid documents but that grantee's response to this inquiry was there was a case in point (information which Healy's counsel apparently already knew). Grantee's legal staff gave no comment on the validity of the decision or whether grantee would again exercise its discretion to waive the subject requirement in the same way as upheld in Norair on a new set of facts. * * *

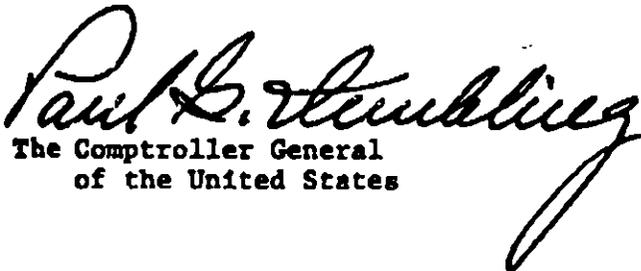
We do not believe the above factual situation required the WSSC to issue an amendment to all bidders advising them of the existence of the Norair decision. Counsel for Healy knew of the existence of Norair and, therefore, the information conveyed by the legal staff of the WSSC gave Healy no advantage over other bidders which Healy did not already possess prior to the telephone call. As the Norair decision was a matter of public record, it was equally available to all prospective bidders.

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Regarding the second issue raised by Wolpe, the responsiveness of Healy's bid, we believe that determination to be controlled by State and local law under the terms of the grant agreement between the WSSC and the EPA. The grant agreement provided that the award of the grant was subject to EPA State and Local Assistance Grant Regulations (title 40, chapter I, subchapter B, part 35, subpart E). 40 C.F.R. § 35.935-4 (1976), entitled "State and local laws," states:

"The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of State, territorial, and local laws and ordinances to the extent that such requirements do not conflict with Federal laws and this subchapter."

As the above discussion indicates, the action of the grantee was consistent with the State law concerning the dispute, as stated in the Norair decision. Accordingly, we find the WSSC decision to accept the bid of Healy had a rational basis and, therefore, we find nothing improper in the award. Copeland Systems, Inc., 55 Comp. Gen. 390 (1975), 75-2 CPD 237.


For The Comptroller General
of the United States